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Via ECF

October 30, 2007

Hon. Shira A. Scheindlin
U.S. District Court
Southern District of New York
U.S. Courthouse
500 Pearl Street
Chambers 1620
New York, NY 10007

Re: John A. Aretakis v. Robert Durivage, Timothy Nugent, Town of North Greenbush
and Robert D. Wells
USDC/SDNY
Case No. 07-cv-5444
Hon. Shira A. Scheindlin

Dear Judge:

By this letter we are respectfully requesting, pursuant to Individual Practice Rule III (A), a pre-motion conference to be scheduled. Our office represents defendant Robert D. Wells, served by substituted service on October 12, 2007, with the summons and amended complaint.

NATURE OF CLAIMS

Plaintiff, pro se, advances a seven-count amended complaint containing five counts that exclusively relate to constitutional claims and two pendent claims arising from a series of allegations centered on an arrest and subsequent prosecution. The amended complaint asserts claims under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1983 and 1988, and state claims of intention infliction of emotional distress and negligence.

NATURE OF PRE-ANSWER MOTIONS

- (a) Change of Venue. 28 U.S.C. §§ 1391(b) and 1404. The core allegations of the amended complaint involve assertions of conduct, activities and decisions occurring in the Northern District, specifically in the County of Rensselaer. Defendant Robert Wells is a resident of Albany County. Defendant Town of North Greenbush is a municipality within Rensselaer County. Upon information and belief defendant Robert Durivage is an officer with the Town of North Greenbush Police Department and a

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resident of Rensselaer County. The arrest and subsequent prosecution took place within the County of Rensselaer.

Insufficiency of Amended Complaint – Rule 12 (b)(6). Plaintiff's constitutional claims may not be brought against Robert D. Wells because he is not a state actor. The pendent claims for intentional infliction of emotional distress and negligence fail to satisfy the liberal pleading requirements of the Federal Rules of Civil Procedure.

It is respectfully requested that a pre-motion conference be scheduled at the Court's convenience and after appearances by the remaining co-defendants.

By means of a copy of this letter we are advising plaintiff pro se and counsel of record of this request. Under separate cover, as an exchange letter pursuant to the Court's Individual Rules and Procedures, the undersigned has initiated a request to eliminate the need for said motions and requested an extension of time to answer or otherwise move on behalf of defendant Robert D. Wells until such time as the Court has addressed the pre-motion conference request and subsequent motion.

Thank you for your attention to this matter.

Respectfully yours,

TOBIN AND DEMPFF, LLP

A handwritten signature in black ink, appearing to read "Michael L. Costello", written in a cursive style.

Michael L. Costello
(MC 5378)

MLC/slc

cc: John A. Aretakis, Esq.
Thomas J. O'Connor, Esq.